

Amended 6/64.  
(REGULATIONS 12(b)) 6/67.

# ADOPTION OF CHILDREN ORDINANCE 1949-1950.\*

35  
" 20/68  
" 30/69

## An Ordinance relating to the Adoption of Children.

1 This Ordinance may be cited as the *Adoption of Children Ordinance 1949-1950*.\*

Short title.  
Short title amended:  
No. 17, 1938,  
s. 4.

2. This Ordinance shall commence on a date to be fixed by the Administrator by notice in the *Gazette*.†

Commencement.

3. The *Adoption of Children Ordinance 1935* is repealed.

Repeal.

3A. Notwithstanding the repeal of the *Adoption of Children Ordinance 1935*, an adoption order made under that Ordinance and in force at the date of commencement of this Ordinance shall, subject to this Ordinance, continue in force, and the provisions of this Ordinance shall apply as if the order had been made under this Ordinance.

Adoption orders under repealed Ordinance.  
Inserted by No. 10, 1950, s. 3.

4. In this Ordinance, unless the contrary intention appears—

Definitions.

“adopter” means a person authorized under this Ordinance to adopt an infant;

“adopted child” means an infant authorized to be adopted under this Ordinance;

“infant” means a person under the age of twenty-one years and includes any person over the age of twenty-one years who has been brought up, maintained and educated by any person or two spouses jointly as his or their child under any *de facto* adoption;

“Register of Births” means the Register of Births kept in pursuance of the *Registration of Births, Deaths and Marriages Ordinance 1941*;

“the Court” means the Supreme Court of the Territory;

“the Registrar-General” means the Registrar-General of Births, Deaths and Marriages appointed under the provisions of the *Registration of Births, Deaths and Marriages Ordinance 1941*.

The *Adoption of Children Ordinance 1949-1950* comprises the *Adoption of Children Ordinance 1949* as amended. Particulars of the Principal Ordinance and of the amending Ordinance are set out in the following table:—

Ordinance.	Number and Year.	Date of Assent by Administrator.	Date of Commencement.
<i>Adoption of Children Ordinance 1949</i>	No. 9, 1949	8th November, 1949	7th November, 1951
<i>Adoption of Children Ordinance 1950</i>	No. 10, 1950	22nd August, 1950	1st September, 1952

† The date fixed was 7th November, 1951—see table above.

Power to make  
adoption orders.

5.—(1.) Upon application by any person desirous of adopting an infant who has never been married, the Court may, subject to the provisions of this Ordinance, make an adoption order authorizing the applicant to adopt the infant.

(2.) Except in the case of an application for an adoption order by two spouses jointly, an adoption order authorizing more than one person to adopt an infant shall not be made.

Restrictions  
on making  
adoption orders.

6.—(1.) An adoption order shall not be made in any case where—

- (a) the applicant is under the age of twenty-five years; or
- (b) the applicant is less than twenty-one years older than the infant in respect of whom the application is made:

Provided that, where—

- (c) the applicant and the infant are within the prohibited degrees of consanguinity;
- (d) the applicant and the infant, being of the same sex, are of the same blood; or
- (e) the Court is satisfied that, in the circumstances of the case, the making of the order will be in the best interests of the infant,

the Court may, if it thinks fit, make the adoption order although the applicant is under the age of twenty-five years or is less than twenty-one years older than the infant.

(2.) An adoption order shall not, unless the Court is satisfied that exceptional circumstances justify the order, be made in any case where the sole applicant is a male and the infant in respect of whom the application is made is a female.

(3.) An adoption order shall not be made except with the consent in writing of every person who—

- (a) is a parent or guardian of the infant in respect of whom the application is made;
- (b) has the actual custody of the infant; or
- (c) is liable to contribute to the support of the infant:

Provided that the Court may dispense with any consent required under this sub-section if it is satisfied that the person whose consent is to be dispensed with—

- (d) has abandoned or deserted the infant;
- (e) cannot be found;
- (f) is incapable of giving such consent;
- (g) being a person liable to contribute to the support of the infant, has persistently neglected or refused so to do;

- (h) is a person whose consent should, in the opinion of the court in all the circumstances of the case, be dispensed with; or
- (i) is a person (not being a parent of the infant) with whom the infant is placed out or apprenticed pursuant to Part IV. of the State Children Acts, 1895 to 1909 of the State of South Australia, in their application to the Territory, as amended by the *State Children Ordinance 1934*.

(4.) An adoption order shall not be made upon the application of one of two spouses without the consent of the other of them:

Provided that the Court may dispense with such consent—

- (a) where the person whose consent is required cannot be found or is incapable of giving such consent; or
- (b) where the spouses have separated and are living apart and the separation is likely to be permanent.

7. The Court shall, before making an adoption order, be satisfied—

Matters with respect to which Court to be satisfied.

- (a) that every person whose consent is necessary under this Ordinance and whose consent is not dispensed with has consented to and understands the nature and effect of the adoption order for which application has been made, and in particular, in the case of any parent, understands that the effect of the adoption order will be permanently to deprive him of his parental rights;
- (b) that the order, if made, will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant; and
- (c) that the applicant has not received or agreed to receive, and that no person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption, except such as the Court sanctions.

8. The Court in an adoption order may impose such terms and conditions as it thinks fit, and may require the adopter by bond or otherwise to make for the adopted child such provision as it thinks expedient and just.

The Court may impose terms and conditions of order.

9.—(1.) A copy of every adoption order, whether made under the provisions of the *Adoption of Children Ordinance 1935* or of this Ordinance, containing particulars as to the name

Particulars to be forwarded to Principal Registrar.

*Adoption of Children Ordinance 1949-1950.*

in full of the adopted child, any authorized alteration in its surname, its sex, the place and date of its birth, the names of its natural parents and the names, addresses and occupations of its adopter or adopters shall be forwarded by the Clerk of the Court to the Registrar-General.

(2.) On receipt of a copy of an adoption order, the Registrar-General shall cause to be entered in a register to be kept by him and called the "Register of Adopted Children" particulars relating to the adopted child in accordance with Form A in the Schedule to this Ordinance.

(3.) Where an adoption order authorizes two spouses jointly to adopt an infant, the spouses shall be respectively referred to in the Register of Adopted Children as the father and the mother of the adopted child.

(4.) Where an adoption order authorizes one person only to adopt an infant, that person shall be referred to in the Register of Adopted Children as the father or the mother (as the case requires) of the adopted child.

(5.) The surname to be entered in the Register of Adopted Children as the surname of an adopted child shall be the surname of the adopter:

Provided that, where the Court authorizes a surname, other than that of the adopter, as the surname of an adopted child, that surname shall be entered in the Register.

Notation  
"Adopted" in  
Register of  
Births.

10. Where the Registrar-General is satisfied that the birth of an adopted child, whether adopted by an order made under the provisions of the *Adoption of Children Ordinance 1935* or of this Ordinance, has been registered in the Register of Births, he shall cause the word "Adopted" to be marked in the margin of the Register opposite the entry relating to the adopted child.

Indexes.

11. The Registrar-General shall cause to be kept an index of the Register of Adopted Children and such other indexes and registers as are necessary to trace the connexion between any entry in a Register of Births marked with the word "Adopted" and the corresponding entry in the Register of Adopted Children.

No public  
inspection  
of Register  
of Adopted  
Children.

12. The entries in the Register of Adopted Children and in all indexes and registers kept in connexion therewith shall not be open to public inspection and no copy or extract purporting to be a copy of, or extract from, any such entry shall be furnished to any person except in pursuance of an order made by a Court of competent jurisdiction.

13.—(1.) No entry in the Register of Births marked with the word “ Adopted ” shall be open to public inspection.

Birth certificates relating to adopted children.

(2.) Where a copy of, or extract from, an entry in the Register of Births marked with the word “ Adopted ” is requested by a member of the public, the copy or extract furnished shall contain such particulars as are contained in the corresponding entry in the Register of Adopted Children and the copy or extract shall be deemed to be a copy of, or extract from, an entry in the Register of Births given in pursuance of the *Registration of Births, Deaths and Marriages Ordinance 1941*.

14. Where an adoption order relates to an infant in respect of whom a previous adoption order has been made, the Principal Registrar shall cause a fresh entry to be made in the Register of Adopted Children in substitution for the entry previously made in respect of the infant.

Variation of adoption order.

15.—(1.) The Minister may make arrangements with the Minister administering any other Territory of the Commonwealth or administering any law of a State relating to the adoption of children for the transmission to, or by him, as the case requires, of a copy of an adoption order concerning a child born in the Territory and adopted under the law of the other Territory or State or born in the other Territory or State and adopted under this Ordinance.

Adoption orders made in a Territory or a State.

(2.) Where a copy of an adoption order made in any other Territory of the Commonwealth or State is received in pursuance of an arrangement made under sub-section (1.) of this section, it shall be forwarded to the Registrar-General who shall deal with the copy as if it were a copy of an adoption order made in the Territory.

16.—(1.) Upon the making of an adoption order, all rights, duties, obligations and liabilities of the parent or guardian of the adopted child shall, in relation to the future custody, maintenance and education of that child, including the right to appoint a guardian or to consent to marriage, be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as though the child was born to the adopter in lawful wedlock.

Effect of adoption order.

(2.) Where an infant has been adopted by two spouses, the infant shall, in the event of any question arising between the spouses as to the custody, maintenance, education of, or right of access to, the infant, be deemed by the Court exercising jurisdiction in the matter, to have been born to the two spouses in lawful wedlock.

*Adoption of Children Ordinance 1949-1950.*

(3.) Except as hereinafter provided, on, from and after the making of the adoption order, the adopted child—

(a) shall be entitled to succeed (whether under any intestacy or disposition) to the real and personal property of the adopter to the same extent as would have been the case if the child had in fact been a child born to the adopter in lawful wedlock:

Provided that an adopted child shall not have—

(i) any right of succession to the real or personal property of a relative of the adopter who dies intestate; or

(ii) any right to any real or personal property under any disposition made by a person, other than the adopter, in favour of the issue, child or children of the adopter, unless it appears that it was the intention of the person making the disposition to include adopted children as objects of the disposition; and

(b) shall not have any right of succession to any real or personal property of its natural parent which, if the adoption order had not been made, might have been claimed (whether under any intestacy or disposition) by such child as a child born to its natural parent in lawful wedlock, unless, in the case of a disposition, such child is expressly named therein:

Provided that the making of the adoption order shall not deprive the adopted child of—

(i) any right of succession to the real or personal property of a relative of its natural parent who dies intestate; or

(ii) any right to any real or personal property under any disposition made by a person, other than its natural parent in favour of the issue or child of its natural parent, unless it appears that it was the intention of the person making the disposition to exclude as objects of the disposition such of the children of the natural parent as have been adopted by another person.

(4.) The making of an adoption order shall not affect any estate, right or interest in any real or personal property to which any person has become entitled, either mediately or immediately in possession, expectancy or contingency by virtue of any disposition made before the making of the adoption order, or by virtue of any devolution by law on the death of any person dying before the making of the adoption order.

(5.) The law for the time being in force in the Territory with respect to the marriage of persons within the degrees of consanguinity or affinity which may affect at law the validity of marriages in fact celebrated, and the provisions of sections seventy-three and seventy-four of the Criminal Law Consolidation Act, 1876 of the State of South Australia, in its application to the Territory, as amended by any law of the Territory for the time being in force, shall apply to an adopted child, both as respects its relations by adoption and as respects its relations by blood.

17. An adopter shall not marry his adopted child, and any marriage contracted in contravention of this section shall be void.

Marriage between adopter and adopted child prohibited.

18.—(1.) Upon the hearing of any application for an adoption order, the Court may—

Power to make interim orders.

- (a) postpone the hearing of the application; and
- (b) make an interim order giving the custody of the infant to the applicant for a period not exceeding two years by way of a probationary period upon such terms and conditions as to the maintenance, education and supervision of the welfare of the infant as the Court thinks fit.

(2.) All such consents as are required to an adoption order shall be necessary to an interim order, but subject to a like power on the part of the Court to dispense with any such consent.

19 An adoption order or an interim order may be made in respect of an infant who has already been the subject of an adoption order, and, upon any application for such further adoption order, or interim order, the adopter under the adoption order last previously made shall, if living, be deemed to be the parent of the infant for the purposes of this Ordinance.

Power to make subsequent order.

20. Where, at the date of commencement of this Ordinance, any infant is in the custody of, and being brought up, maintained and educated by any person or by two spouses jointly as his or their own child under any *de facto* adoption, the Court may, upon the application of such person or spouses, and notwithstanding that the applicant is a male and the infant a female, make an adoption order authorizing him or them to adopt the

Provision as to *de facto* adoptions.

infant without requiring the consent of any parent or guardian of the infant to be obtained, upon being satisfied that, in all the circumstances of the case, it is just and equitable and for the welfare of the infant that no such consent should be required and that an adoption order should be made.

Power to vary or discharge adoption order.

**21.**—(1.) Upon application by a person authorized by the Administrator, the Court may, in its discretion, vary or discharge an adoption order, subject to such terms and conditions as it thinks fit; but the adoption order shall not be varied or discharged unless the Court is satisfied that the variation or discharge of the order, if made, will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant.

(2.) Where an adoption order is discharged, then, subject to the conditions (if any) named in the discharging order, the child and its natural parents and the adopter shall be deemed for all purposes to be restored to the same position *inter se* as existed immediately before the adoption order was made:

Provided that such restoration shall not affect anything lawfully done or any right or interest which became vested in the child while the adoption order was in force.

Applications may be heard *in camera*.

**22.**—(1.) An application under this Ordinance may be heard by the Court in open court or in public or private chambers.

(2.) At the hearing of any application, the Court may order that any person, other than the parties to the application and the persons representing them upon the application, shall be excluded from the court room or other place of hearing.

(3.) Where the Court makes an order under the provisions of the last preceding sub-section, particulars of, or relating to, the application shall not be published, in any newspaper or otherwise, unless the Court directs that such particulars may be published.

(4.) Any person who publishes particulars of, or relating to, an application in contravention of the provisions of the last preceding sub-section shall be guilty of an offence.

Penalty: Fifty pounds or imprisonment for one month.

Rules of Court.

**23.** The Judge of the Territory may make Rules of Court not inconsistent with this Ordinance prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for giving effect to this Ordinance, and, in particular, regulating the practice and procedure in respect of proceedings of any kind under this Ordinance.

**THE SCHEDULE.**

Section 9.

**Form A.**

1	2	3	4	5	6	7	8
No. of Entry.	Date and Place of Birth of Infant.	Full Christian Name or Names of Infant.	Surname of Infant.	Sex of Infant.	Full Christian Name or Names, also Surname and Address and Occupation of Father and Mother of Infant.	Date of Entry.	Signature of Registrar-General or District Registrar.